

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BALLY MANUFACTURING CORPORATION,
a Delaware corporation,

Plaintiff-Counterdefendant,

vs.

D. GOTTLIEB & CO., a corporation,
and WILLIAMS ELECTRONICS, INC., a
corporation, and ROCKWELL INTERNATIONAL
CORPORATION,

Defendants-Counterplaintiffs.

BALLY MANUFACTURING CORPORATION,
a Delaware corporation,

Plaintiff,

vs.

GAME PLAN, INCORPORATED, a
Delaware corporation,

Defendant.

No. 78 C 2246✓

JAN 18 1984

No. 79 C 713✓

DEPOSITION

of

JOHN A. BRITZ

CLAUDE W. YOKER, JR.

OFFICIAL COURT REPORTER
U. S. DISTRICT COURT
UNITED STATES COURT HOUSE
ROOM 1818
CHICAGO, ILLINOIS 60604
312-427-4393

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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a Delaware corporation,)
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Plaintiff-Counterdefendant,)
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vs.) No. 78 C 2246
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D. GOTTLIEB & CO., a corporation,)
and WILLIAMS ELECTRONICS, INC., a)
corporation,)
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Defendants-Counterplaintiffs.)

BALLY MANUFACTURING CORPORATION,)
a Delaware corporation,)
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Plaintiff,)
)
vs.) No. 79 C 713
)
GAME PLAN, INCORPORATED, a)
Delaware corporation)
)
)
)
Defendants.)

DEPOSITION of JOHN A. BRITZ, taken by
the defendant herein, pursuant to notice and agreement,
before Ruth Anne James, (being a disinterested person,
not of counsel for, or employed by any or either of
the parties hereto, or interested in the outcome of
said cause) a duly Certified Shorthand Reporter and
Notary Public of the State of Illinois, at the law
offices of McDougall, Hersh & Scott, 135 South LaSalle
Street, Suite 1540, Chicago, Illinois, commencing on
Thursday, May 22, 1980 at 10:10 a.m.

PRESENT:

FITCH, EVEN, TABIN, FLANNERY & WELSH,
(135 South LaSalle Street, Suite 900
Chicago, Illinois 60603), by
MR. A. SIDNEY KATZ

appeared on behalf of Bally Manufacturing
Corporation;

ARNOLD, WHITE & DURKEE
(2100 Transco Tower
Houston, Texas 77056), by
MR. WAYNE M. HARDING,

appeared on behalf of D. Gottlieb & Co.
and Rockwell;

MC DOUGALL, HERSH & SCOTT
(135 South LaSalle Street, Suite 1540
Chicago, Illinois 60603), by
MR. MELVIN M. GOLDENBERG,

appeared on behalf of Williams Electronics,
Inc.

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I N D E X
W I T N E S S

A

Direct

John A. Britz

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MR. KATZ: I want to make a statement: with respect to the designations, as I indicated yesterday, I have been informed that your designation number 2 on your Notice of Deposition served December 28, 1979, that is, the depositions which were originally scheduled for January 10, and those depositions were canceled, that item No. 2, I am informed that there were no developments by Bally or its affiliated companies prior to May 13, 1975, of microcomputer controllers at its Utica, New York facility, including controllers for arcade games, gaming devices, and pinball games.


There just were no microcomputer controllers worked on at the Utica facility.

So we are not going to designate any witness with respect to that request number 2.

MR. HARDING: Does that mean, Mr. Katz, that there was no controller activity?

MR. KATZ: I do not know, but there was no development work with respect to microcomputer controllers.

MR. HARDING: Well, for example, if there is preliminary work that ceased before it evolved into the area where it was transformed into computer or microcomputer technology, well then that still would be within the ambit of that request.



MR. KATZ: I am informed that there was no such work.

MR. HARDING: We have had informal discussions on the purpose of that, and the particular Braumley document; are you saying that there is no one to speak on that document?

MR. KATZ: Well, I have only addressed myself to this designation; so I am not prepared to make any other representations at this time.

JOHN A. BRITZ

called as a witness by the defendant herein, having been by me, the said Ruth Anne James as Notary Public aforesaid first duly sworn, was examined upon oral interrogatories and he did thereupon depose and testify as follows:

DIRECT EXAMINATION

BY MR. HARDING:

Q Will you state your name, please.

A John Anthony Britz.

Q And where do you reside?

A 189 Oaksbury, O-a-k-s-b-u-r-y, Lane,
Palatine, Illinois.

Q Is Palatine a suburb of Chicago?

A Yes.

Q And you are employed by Bally

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Manufacturing?

A That is correct.

Q Are you an officer?

A Yes.

Q What is your title?

A Executive vice-president, technology.

Q And how long have you had that title?

A I do not recall.

Q Approximately.

A Three years.

Q How long have you been employed by Bally?

A The new company which was formed in 1963, since approximately September 1963.


Q And to what do you refer when you say the new company?

A Well, the old -- the old Bally, which was Lion Manufacturing, actually it was bought out in 1963 by a partnership, and a new company was formed then.

Q And that was before you were hired by Bally?

A That is right, in 1963; but I had worked for Bally previously, or Lion, L-i-o-n.

Q Did you have any titles from 1963 through three years ago?



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Q Was there a executive vice-president of something other than technology in the early '70s?

A No.

Q Were pinball games manufactured at the Belmont Avenue plant --

A Yes.

Q -- in the 1970s.

Any other Bally products?

A Yes.

Q What else?

A Slot machines.

Q Anything else?

A A type of pinball called Bingo, which is a gambling type, and some arcade games.

Q Was that the primary manufacturing facility of Bally in the 1970s?

A Yes.

Q Have you ever had your deposition --

A I do not follow you there, though. Would you rephrase that question, please.

Q Well, say, prior to 1976, was that the primary manufacturing facility of Bally for pinball, slots, and bingo?

A Primary, yes, although we had other facilities

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for slots.

Q Have you ever had your deposition taken before?

A Yes.

Q How many times, approximately?

A Once.

Q Do you recall when that was?

A No.

Q Was that in connection with a legal proceeding that Bally was involved in?

A Yes.

Q What was that legal proceeding?

A The Magnavox suit.

Q On a video game patent?

A Yes.


Q So you are familiar with the procedure of a deposition?

MR. KATZ: I object to the question, it is calling for a legal conclusion from a witness who is not qualified to answer the question as it was phrased.

MR. HARDING: Procedure, Mr. Katz, is not a legal question.

BY MR. HARDING:

Q Are you familiar with the procedure of a



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deposition, Mr. Britz?

MR. KATZ: Are you talking about what the procedure of a deposition is --

MR. HARDING: Yes, yes, that is what my question was.

MR. KATZ: -- in general and the rules required, and so on?

I will let the witness answer the question if he understands it, but indicate for the record that I do not think he is competent to answer the question.

BY MR. HARDING:

Q Well, you understand, Mr. Britz, that you are under oath and that the court reporter, here, is taking down questions which I ask you and that she is taking down the answers which you give, and that this testimony will have the same force and effect as if we were in front of a judge.

And unless you indicate that you do not understand a question, I will assume that you do understand the question, and the answer you give will be assumed to be the best answer to your recollection to the question.

And after the end of the deposition,

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the questions and answers will be transcribed into a booklet and you will be presented with a booklet for a review to verify the questions and answers were as expressed during the deposition; and that will be ultimately filed with the court.

Do you understand that procedure?

A You just told it to me.

Q Have you ever been a trial witness?

A No.

Q Have you ever been a witness at any government proceeding such as a congressional inquiry or anything?

A No.

Q In approximately 1970, Frank Bracha was hired by Bally; is that correct?

A I am not sure of the year.

Q But it was in the early to mid part of the 1970s?

A Yes.

Q Did you have any role in the hiring of Mr. Bracha?

A To some extent, yes.

Q What role did you play?

A I gave a final approval.



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Q Did you interview Mr. Bracha?

A I do not recall.

Q Did you participate in the determination to hire a person to satisfy the apparent needs for a man to fill that responsibility?

MR. KATZ: I object to the question as lacking foundation as to whether there was any apparent need. It presupposes a --

BY MR. HARDING:

Q Well, Mr. Britz, you hired Mr. Bracha because you felt a need to hire an individual; is that correct?

A True.

Q Did you participate in the determination that there was such a need?

A True.

Q What was the need for hiring Mr. Bracha in the early to mid 1970s?

A To actually bolster our engineering department electronically.

Q Were there any reasons that the engineering department needed bolstering electronically in that time frame?

A Rephrase that again, will you.

Q Well, did any employees, any employees

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skilled electronically leave Bally, or did some event happen that caused a need for a new electronic engineer to be hired;

With that background, my question is: do you recall the reason for the need to have arisen to hire a person such as Mr. Bracha at that time?

A We felt the need for more sophisticated, educated, engineers.

Q And do you recall what the basis for that need was?

MR. KATZ: Object to the question as being indefinite as to what you mean by "basis."

BY MR. HARDING:

Q Why did the need arise for more sophisticated, educated, engineers?

MR. KATZ: If you know.

BY MR. HARDING:

Q And let's, in order to have that understanding: I do not ask for speculation in the deposition, and I am only seeking your best recollection of a given point.

And if I ask you a question and you do not have a direct recollection, why, would you please tell me that you do not recall or you do not

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know.

MR. KATZ: I also object to the question as lacking foundation in the way it was phrased.

BY THE WITNESS:

A I do not recollect.

MR. HARDING: Would you repeat my earlier question, then, that he does not recall.

(Whereupon the record was read
by the reporter as requested.)

BY MR. HARDING:

Q Do you recall an employee by the name of Colin Foster --

A Yes.

Q -- at Bally.

Was he an employee sometime before Mr. Bracha was hired?

A I cannot recollect.

Q So you do not recall whether Mr. Foster's departure was the reason Mr. Bracha was hired?

A No.

Q Do you recall any electronic games that Mr. Foster worked on?

A Yes.

Q What do you recall?



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A I am trying to think of the name of it, the first one -- one of them was Bally Alley, a bowling game.

Q He worked on other electronic games, to your recollection?

A I do not know how electronic it was; I do not know whether it was completely solid state or whether it was electromechanical, but he did work on it.

Q What was the general subject matter of that game?

A It was a racing game.

Q Was that prior to the Bally Alley or subsequent to it?

A I do not recall.

Q Do you recall what the first game was manufactured by Bally which employed a microprocessor?

A I would be speculating.

Q Are there several games, one of which would definitely be the first game?

MR. KATZ: I object to the question as indefinite.
BY MR. HARDING:

Q The first game employing a microprocessor.

A I would be speculating.

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Q Was Bally Alley one of the first?

A I would like to consult with Sid.

(There was a discussion between the witness and Mr. Katz outside of the deposition room, after which the taking of the deposition was resumed as follows:)

MR. KATZ: Would you read the question back, please.

(Whereupon the record was read by the reporter as requested.)

BY MR. HARDING:

Q And I will amend that to one of the first employing a microprocessor.

A Can I say this off the record?

MR. KATZ: No, no, don't say anything off the record.

The problem that the witness had was, he could not answer your question because he did not know whether the Bally Alley employed a microprocessor.

BY MR. HARDING:

Q Okay. What, to your recollection, was the first game employing a microprocessor at Bally?

A The flipper, pin game.



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Q Was that the Boomerang, which was built by Mr. Bracha and Mr. Englehardt?

A I do not know.

Q Have you ever heard of the pinball game called Flicker?

A Yes.

Q Was that perhaps the first employing a micro-processor?

MR. KATZ: The first of -- you are talking about games --

MR. HARDING: The first game.

MR. KATZ: Of what? The first game ever, you mean?

BY MR. HARDING:

Q Well, let me ask the question:

What do you recall about Flicker?

A A game we made at Bally, electromechanical.

Q To your recollection was it ever converted into a microprocessor operated game?

A Yes.

Q Who converted it, to your recollection?

A MCI.

Q And who is MCI?

A Dave Nutting.

Q Do you recall whether that was before or

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after Mr. Bracha worked on the Boomerang?

MR. KATZ: Object to the question. You have never established any recollection of the Boomerang or that there has been any foundation for that question.

BY MR. HARDING:

Q You can answer the question.

A Would you repeat that, please.

Q (Read by the reporter.)

MR. KATZ: Object to the question as to lacking foundation and establishing that he knows that Mr. Bracha worked on something called a Boomerang.

So I instruct him not to answer that question.

MR. HARDING: I am going to say, Mr. Katz, on these foundation questions, I was going to try my utmost to finish in a half a day or so if we could; but when it comes to facts clearly not in controversy in this litigation, which have clearly been established, and you insist on making foundation objections of that nature, especially when I preface the question with a "Do you understand," then there is no promise at all that we are going to finish in a very short time.

Because I will go back and I will

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establish all these things. But it is only going to prolong this deposition and take more of this witness' time. But I will go back and --

MR. KATZ: I thought I was giving you quite a bit of leeway on foundation, but some of them were so extreme that I feel that there has to be some minimal compliance with the evidentiary rules in this case.

I would like to keep the deposition as short as possible, but I feel compelled to make certain objections.

BY MR. HARDING:

Q Mr. Britz, do you know that Mr. Bracha and Mr. Englehardt made a pinball game employing a micro-processor at some point in time?

A Yes.

(Mr. Goldenberg entered the deposition room.)

BY MR. HARDING:

Q And do you know that one such game was a Bally Boomerang?

THE WITNESS: Can I consult with you, Sid?

MR. KATZ: Sure.

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(There was a discussion between the witness and Mr. Katz outside the deposition room, after which the taking of the deposition was resumed as follows:)

MR. KATZ: Could I have the question back, please.

MR. HARDING: Before you do that, let me introduce Mr. Britz: Mel Goldenberg, attorney for Williams Electronics.

(There was a discussion outside the record, after which the taking of the deposition was resumed as follows:)

Q (Read by the reporter.)

BY THE WITNESS:

A No.

BY MR. HARDING:

Q You do not recall that?

A No.

Q Do you recall a Bally Boomerang game being converted into a microprocessor driven game?

A No.

Q Do you recall a Bally Bow and Arrow solid state game?



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A Yes.

Q Was that driven by microprocessor, to your recollection?

A Yes.

Q To your recollection was that the first microprocessor driven pinball game at Bally?

A No.

Q To your recollection what was the first microprocessor driven pinball game at Bally?

A I do not remember.

Q Was it before or after the Bow and Arrow?

A I do not remember.

Q Do you recall whether the Flicker game which was converted by MCI was ever on the Bally premises?

A No.

Q You do not recall whether it was?

A No.

(Mr. Goldenberg left the deposition room.)

BY MR. HARDING:

Q Do you recall ever having been told one way or the other whether it was?

A No.

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Q Was Mr. Bracha hired at Bally for a purpose of converting some of Bally's electromechanical products into electronic controlled products?

A I cannot recall.

Q Do you recall anybody being hired at Bally in the early to mid 1970s for at least the partial purpose of converting Bally's electromechanical products into electronic controlled products?

MR. KATZ: Object to the question as being indefinite as to what is meant by "partial purpose."

MR. HARDING: Well, as I say, Mr. Katz, we will go back and keep going.

BY MR. HARDING:

Q Mr. Bracha was hired probably for more than one purpose, do you recall?

MR. KATZ: I object to the question as lacking foundation and also as indefinite.

I will let the witness answer if he can, if he understands the question.

BY THE WITNESS:

A I find it confusing.

BY MR. HARDING:

Q Okay. Well, you said Mr. Bracha was hired to bolster the engineering department.

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A True.

Q And he was hired to bolster it electronically.

Now, that seems to suggest that he was going to employ his electronic skills; is that correct?

A That is right.

Q And what was the purpose, if you recall, of hiring him to employ his electronic skills?

A There was a need for it.

Q Okay, and what was the need?

A Electronic engineering.

Q Was this a new need at Bally at the time?

A No.

Q It was an ongoing need?

A Yes.

Q Do you recall when this need commenced?

A No.

Q Was it many years before the hiring of Mr. Bracha?

A I do not recall.

Q Well, do you recall any need whatsoever to convert the electromechanical control design of the pinball game to an electronic design in the pre-1975 time frame?

THE WITNESS: Let me have that again.



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Q (Read by the reporter.)

THE WITNESS: Can I see you out there?

MR. KATZ: Sure.

(There was a discussion between the witness and Mr. Katz outside the deposition room, after which the taking of the deposition was resumed as follows:)

MR. KATZ: Could I have that question back.

Q (Read by the reporter.)

BY THE WITNESS:

A No.

BY MR. HARDING:

Q Was that because Bally was making a profit which was acceptable to Bally on its electromechanical pinball machines at the time?

MR. KATZ: Object to the question as lacking foundation.

BY MR. HARDING:

Q Were you familiar, Mr. Britz, with the profitability of Bally electromechanical pinball games in the pre-1975 period?

A No.

Q Were you familiar with whether they were

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even profitable versus sold at a loss?

A No.

Q Were you familiar after 1975 with whether Bally flipper-type pinball machines were profitable or sold at a loss?

A Yes.

Q Beginning approximately what year did you become familiar with that?

A I do not recall.

Q Do you recall at some point of time Bally's entire flipper pinball line becoming microprocessor controlled?

A Read the question again.

Q (Read by the reporter.)

BY THE WITNESS:

A I do not know if you are referring to the profitability or to the production.

BY MR. HARDING:

Q No, I am referring to the game itself becoming a microprocessor driven pinball game.

A The year?

Q I am asking first if you recall that the line did become all microprocessor controlled?

A It did.



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Q And do you recall what year that was?

A No.

Q Was that approximately the time that you became familiar with the profitability of the pinball line?

A Yes.

Q And what do you recall the profitability being?

A I do not recall.

Q You just recall that you became familiar with it at that time?

A Correct.

Q Prior to 1975 do you recall anybody else other than Bally expressing a need for electronic controlled pinball games?

A No.

Q Do you recall whether, prior to 1975, Bally received proposals from third parties suggesting electronic controlled pinball machines?

A Yes.

Q Do you recall who these proposals were made by?

A Nutting.

Q Anybody else?



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A I do not recall.

Q Do you recall any proposals made by Mr. Bronk in Dallas?

A I do not recall.

Q Do you recall any proposals from Mr. McGraw and a Mr. McMillan out of Michigan for electronic controlled pinball games in the 1973 time frame?

A I do not recall.

Q I hand you document 1085, 1086, and see if that refreshes your recollection to any extent?

A (Witness reading.)

Can I consult with you?

MR. KATZ: Sure.

(There was a discussion between the witness and Mr. Katz outside of the deposition room followed by a brief recess, after which the taking of the deposition was resumed as follows:)

MR. KATZ: What is the question?

MR. HARDING: Whether this document refreshes his recollection about any outside proposals by the gentlemen, McGraw and McMillan.

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BY THE WITNESS:

A No.

BY MR. HARDING:

Q Do you recall ever having seen this document before?

A No.

Q I notice it is from Mr. Bracha to Mr. Lally. Who is Mr. Lally?

A An engineer, a Bally engineer.

Q Was he an officer of Bally in 1973?

A I do not recall.

Q In the very last paragraph of document 1085 there is a sentence:

"In my opinion the conversion of a flipper game from an electromechanical design to an electronic design will become a reality in the not-too-distant future."

Do you recall in 1973 any thoughts along those lines at Bally Manufacturing Corporation?

A No.

Q Do you recall any thoughts along those lines in the flipper pinball industry in 1973?

A No.

Q This document is dated September 1973, and

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I ask: do you recall any efforts commencing at Bally sometime after September of 1973 towards developing an electronic controller for pinball games?

A Yes.

Q Do you recall various projects being assigned to Mr. Bracha for incorporating electronic control circuits for controlling various of Bally's products in the pre-1975 time frame?

A Yes.

Q Let me hand you document 1201 through 1208 which has been produced by Bally's counsel in this litigation.

First I will ask you if you recall having seen that document before?

A No.

Q Or any pages of the document?

A No.

Q On I there is a heading, "Slotronic, Semi-Electronic Slot Machine"; II on page 3, "Electronic Slot"; III on page 4 is "Novelties"; and in the last paragraph of that page it says:

"The advanced development would investigate, propose, and synthesize an electronic type flipper. This is a relatively long term

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project, but ultimately it will offer greater economy, reliability, and use of automated manufacturing techniques."

A Where are you at?

Q This is at the bottom of page 4, which is designated No. 1204, the very last paragraph.

A (Witness reading.)

Q Do you recall in early 1974 whether any projects commenced towards looking into designing electronic controllers for pinball machines?

A No.

Q Do you recall in 1974 whether the sales of Bally flipper pinball games were increasing on an annual basis?

A No.

Q I am going to hand you a document produced by your counsel in this litigation, No. 1058 through 1059. Unfortunately in the reproduction the date and identification of the magazine was cut off.

I will just tell you it is a July 1975 document in one of the pinball industry magazines. And if you will look on the second page, first column, fifth paragraph, it says:

"Bally Manufacturing, solid state

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division, has been researching solid state possibilities in the traditional pin game for over a year. According to Tom Nieman, regional marketing director, 'We'd be putting our heads in the sand if we didn't,' he said."

Do you recall having seen this document, 1058 through 1059 before?

A No.

Q Do you know who Mr. Tom Nieman is?

A Yes.

Q Who is he?

A In sales.

Q For Bally Manufacturing?

A Right.

Q Did he have any products that he had specific responsibility over for selling?

A Yes.

Q What was that?

A Pin games.

Q Do you recall in July of '75 whether Bally Manufacturing Corporation had been researching solid state possibilities in their traditional pin games for over a year?

A No.



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Q Now I will hand you document 1070 through 1071 which has been produced by your counsel. It purports to be a July 31, 1974 letter from a Mr. George Bronk to a Mr. Ross Shearer of Bally.

I ask if you have seen either this document or the original unannotated version of this document before?

A No.

Q Now, I believe you testified you did not recall any outside submissions by Mr. Bronk earlier in this deposition, correct?

A That is correct.

Q And reading this document does not refresh your recollection?

A No.

Q In 1974 do you recall any evaluation teams being formed at Bally?

A (No response.)

Q And let me go ahead and give you a document, 1093 and 1094, which may help refresh your recollection.

A (Witness reading.)

Can I consult with you?

MR. KATZ: Sure.

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(There was a discussion between the witness and Mr. Katz outside the deposition room, after which the taking of the deposition was resumed as follows:)

MR. KATZ: Can I have the question back.

Q (Read by the reporter.)

MR. KATZ: His problem is that he does not know if you are asking him -- and this is the problem that arises because of the wording of the question -- but he does not know whether you are asking him about this evaluation team or whether this evaluation team was formed in 1974; and he did not know how to answer the question.

BY MR. HARDING:

Q Okay. Well, let me rephrase to help.

In 1974 was there an evaluation team at Bally Manufacturing?

A Yes.

Q Were there several evaluation teams at Bally?

A I do not recollect, I do not recall.

Q But you do recall at least one?

A Pardon me?

Q You do recall at least one?

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A Yes.

Q Now, referring to document 1093, do you recall the evaluation team mentioned in that document?

A Yes.

Q And is that the one that you are referring to?

A Yes.

Q Now, do you recall when that evaluation team was formed?

A No.

Q Do you recall whether it was formed before or after Mr. Bracha's memo dated February 25, 1974, and designated document 1201 et seq?

A Would you rephrase that, please.

MR. KATZ: Let's hear the question back.

Q (Read by the reporter.)

BY THE WITNESS:

A No.

BY MR. HARDING:

Q What was the purpose, if you recall, of the evaluation team mentioned in document 1093?

MR. KATZ: I am going to object to that question for lack of foundation.

MR. HARDING: I said, if he recalls.

MR. KATZ: That does not cure the objection.

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BY MR. HARDING:

Q Please answer the question, Mr. Britz.

MR. HARDING: If I have to, it is only going to take another three minutes to explain why I am entitled to have that question answered.

MR. KATZ: Well, I think that the record will show clearly that in the past when I have made foundation objections they were quite appropriate, because when you have tried to establish a foundation, you found out there was no foundation.

I do not know what the foundation is; I would like to know. But I think in this particular proceeding it would be helpful to have foundations established in certain areas.

BY MR. HARDING:


Q You have testified you recall the evaluation team identified in document 1093, correct?

A Yes.

Q Now, do you recall the purpose for that team?

MR. KATZ: Object to the question as lacking foundation.

I will let him answer this question, if he can, if he understands the question.



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MR. HARDING: Well, any time that you instruct the witness not to answer on a foundation basis, Ruth Anne, please mark the question. It will save me the time to do it later.

BY THE WITNESS:

A I find it a bit confusing, but I know the reason for the formation of the evaluation team, yes.

BY MR. HARDING:

Q Okay. Will you please tell me.

A It is to get better products into Bally Manufacturing Corporation and evaluate them.

Q Now, do you recall the members of the evaluation team? And perhaps we can expedite.

If you will refer to document 1093, the memo says: "To Evaluation Team Members," and then has a carbon copy at the very bottom of the page listing a number of individuals.

Do you recall whether the individuals listed in the "cc" at the bottom of the page were the members of this evaluation team?

A Yes.

Q They were members of the team?

A Yes.

Q So you were a member of the team?

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A I do not recall whether this was a team or not; some of them were on the team.

Q Okay. Can you tell me the ones you specifically remember being on the team?

A W. T. O'Donnell, Sr., Dan Conroy, Hank Ross, Joseph Lally, Frank Bracha, John Britz, Wolverton.

Q Now, in the fourth item on that document there is a reference to an agreement with David Nutting.

And you have mentioned David Nutting earlier in the deposition. Do you recall an agreement with Mr. Nutting as of July '74?

A No.

Q Do you recall any relationship between Bally and Mr. Nutting in the 1974 time frame?

MR. KATZ: You are talking about business relationship?

MR. HARDING: Yes, we will limit it to business relationship.

BY THE WITNESS:

A No.

BY MR. HARDING:

Q Now I will hand you document 1219 through 1223 and ask you to review that.

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MR. HARDING: Let's take a two-minute break.

(There was a brief recess, after which the taking of the deposition was resumed as follows:)

BY MR. HARDING:

Q Do you recall having seen this set of documents before?

A No.

Q In 1974 did Midway Manufacturing Company have a Utica Division?

A I do not know.

Q In 1974 was any of the work being done at Midway under your responsibility?

A No.

Q Do you know whose responsibility it was being done under?

A No.

Q Would it have been Hank Ross?

A Rephrase that.

MR. KATZ: He does not know what would. It is an indefinite question.

THE WITNESS: Is that "would" or "could"?

BY MR. HARDING:

Q Would.

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A Would. I do not know.

Q Do you recall Bally Manufacturing having received a proposal for an electronic flipper game from a Mr. Ernie Braumley?

MR. KATZ: Excuse me. Could I have that question reread.

Q (Read by the reporter.)

BY THE WITNESS:

A No.

BY MR. HARDING:

Q I refer you, please, to pages 1220 through 1228 and see if that refreshes your recollection?

A No.

Q Do you recall any work being done at Midway Manufacturing in the pre-1975 time frame in connection with an electronic controlled flipper game?

A No.

Q Now, I will hand you document No. 1092 and ask you to take a look at it.

This is a document dated August 12, 1974, purportedly written by Mr. Joe Robbins to the members of the evaluation team, and I direct your attention specifically to Paragraph V.

A (Witness reading.)

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Q Do you recall in 1974 the possibility of using Eric Braumley for an electronic flipper development program?

A No.

Q Have you ever heard the name Eric Braumley before?

A Yes.

Q Do you know who Mr. Braumley is?

A No.

Q The previous document that we looked at referred to a Mr. Ernie Braumley; do you know whether Eric Braumley and Ernie Braumley are the same people?

A No.

Q In that paragraph there is a reference to the various approaches to the ultimate electronic game having been analyzed. Do you see that sentence?

A Yes.

Q Do you recall prior to 1975 whether the evaluation team analyzed various approaches to the ultimate electronic flipper game?

MR. KATZ: Excuse me, could I have that whole question from the very beginning of that question.

(Whereupon the record was read by the reporter as requested.)

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BY THE WITNESS:

A Yes.

BY MR. HARDING:

Q What do you recall?

A Just discussing it.

Q Do you recall the types of approaches that were discussed?

A No.

Q Do you recall whether a microprocessor type pinball game was discussed?

A Yes.

Q Was it discussed?

A Yes.

Q Do you recall whether a version called TTL or transistor-transistor logic was discussed?

A No.

Q What do you recall about the microprocessor driven pinball game being discussed?

MR. KATZ: Let's establish a date, a time, when you are going for this recollection.

BY MR. HARDING:

Q On or about August of 1974.

THE WITNESS: Can I consult with you?

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(There was a discussion between the witness and Mr. Katz outside the deposition room, after which the taking of the deposition was resumed as follows:)

MR. KATZ: His problem was that he did not understand the question with respect to the dates in what he had said before, about whether you were talking about prior to '75 or around August '74, the date of this memorandum, the 1092.

Can we have the question back.

. Q (Read by the reporter.)

MR. KATZ: He indicated that the microprocessor game that he recalled was prior to '75, but he does not know if it was discussed in connection with this document, 1092.

BY MR. HARDING:

Q Is that correct, Mr. Britz?

A That is correct. I do not recall.

Q Do you recall any approaches being discussed in August of 1974?

A No.

Q Do you recall the electronic microprocessor approach being discussed on any date more specific

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than sometime earlier than 1975?

A Yes.

Q What date do you recall?

A I do not remember the date.

MR. KATZ: Can he give you an approximate?

MR. HARDING: Oh, absolutely.

BY THE WITNESS:

A Oh. Approximately in September, early part of October '74.

BY MR. HARDING:

Q And what fixes that general time frame in your mind, if anything?

A A visit to Nutting.

Q And what visit are you referring to?

A A visit to see the electronicized flipper they had.

Q Do you recall the name of that game?

A Flicker.

Q Did you make that visit?

A Yes.

Q Do you recall who else made the visit?

A Yes.

Q Who?

A Dan Conroy, Inge Telnaes.

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Q Anybody else?

A Not to my recollection.

Q Do you recall who if anybody attended on behalf of MCI?

A Dave Nutting and Jeff Frederiksen.

Q Were they the only ones?

A As far as I can recall.

Q Now, referring back to document 1092, in Paragraph 8 it refers to the flipper market coming under discussion in this meeting purportedly held August 12, 1974, by the evaluation team.

Do you recall prior to the September/October time frame that we have just talked about, 1974, the evaluation team discussing the flipper market?

A No.

Q After September/October 1974, do you recall the evaluation team discussing the flipper market, let's say, through mid 1975?


A Yes.

Q What do you recall?

A We had a meeting on electronicizing the flipper, and decided to go ahead on our own.

Q Now, who is "we"?

A I cannot recall exactly.



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Q Well, is it the evaluation team or members of the evaluation team?

A Members of it.

Q And at that time you discussed the flipper market?

A The flipper machine.

Q Okay. I think the question was directed to the flipper market having come under discussion before mid 1975.

A Would you rephrase that again.

MR. KATZ: The question is probably giving him a problem as to the meaning of "flipper market," that is a term that has given other witnesses problems.

MR. HARDING: Well, I object to that characterization.

MR. KATZ: I object to the question as being indefinite, then.

MR. HARDING: I do not think "flipper market" has given other witnesses problems.

MR. KATZ: I will enter a formal objection to the indefinite nature of the question.

BY MR. HARDING:

Q Now, we have just recently had testimony about the flipper market before August of 1974,



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correct, and you did not recall any.

A That is right.

Q Now, do you recall any discussions by the evaluation team concerning the flipper market prior to mid 1975?

MR. KATZ: I object to the question as being indefinite as to what the meaning of "flipper market" is in your question.

MR. HARDING: The same meaning as that he answered previously on flipper market.

MR. KATZ: I do not know what that was, and I do not know if it is the same as what your meaning is.

MR. HARDING: Well, I will have the witness' understanding.

BY MR. HARDING:

Q What is your understanding, then, of the flipper market?

MR. KATZ: If he has any understanding.

I object to the question for lack of foundation.

BY MR. HARDING:

Q Mr. Britz, how long have you been employed in a job related to flipper pinball machines?

A Since 1963.



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Q You understand what the flipper market is, then, don't you?

MR. KATZ: Do you?

MR. HARDING: Mr. Katz, if you want to cross-examine the witness, please do it after I am finished.

BY THE WITNESS:

A It is confusing.

BY MR. HARDING:

Q Do you have an understanding what the term "flipper market" means?

A Yes.

Q What is your understanding?

A It is the market out there that absorbs flipper games.

Q And that is the domestic market, the international market?

A Correct.

Q Now, prior to mid 1975 do you recall the flipper market having come under discussion by the evaluation team?

A No.

Q Now, I want to hand you, Mr. Britz, document 1087 through 1089, which is a pair of documents.

The first one is a departmental



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correspondence dated September 16, '74, from a Mr. John Britz to Joe Lally and Frank Bracha; and the second is an attached letter dated September, '74, from Mr. Joseph Mroz, M-r-o-z, to Mr. Bill O'Donnell.

I ask you if you recall having seen those documents before?

A (Witness reading.)

MR. KATZ: The outstanding question is?

Q (Read by the reporter.)

BY THE WITNESS:

A No.

BY MR. HARDING:

Q Do you recall having seen the unannotated version of these documents?

A No.

Q Do you recall ever having had correspondence with a Mr. Mroz from Pennsylvania?

A No.

Q Do you recall ever having been advised that anybody of Bally ever had any correspondence with a Mr. Mroz of Pennsylvania?

A No.

Q I want to hand you document No. 1096 through 1098, and ask if you recognize those documents as



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anything you have seen before?

A I do not recall.

Q Do you recall the subject matter of those documents?

A Yes.

Q What is the subject matter of those documents?

A Electronicizing a flipper.

Q All three documents relate to that? And specifically on the second page?

A No, they do not.

In going over this very carefully, now, I find out it looks like it is pointed towards a slot machine.

Q Okay. Do you recall a project underway in mid 1974 to electronicize a slot machine?

MR. KATZ: Can I have the question back.

BY MR. HARDING:

Q And I will refer you back to document 1201, which is the February '74 memo from Mr. Bracha.

(The question was read by the reporter as requested.)

BY THE WITNESS:

A No.



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BY MR. HARDING:

Q Do you recall any program concerning electronicizing a slot machine which was terminated on or around September 26, 1974? And I refer you back to document 1096.

A No.

Q Now I hand you document No. 589 through 594, and ask if you recall having seen those documents before?

Now, I am referring to the original, of course, of the documents, or earlier photocopies. It is a rather poor copy at this point.

The first document is entitled "The System."

A (Witness reading.)

Rephrase that again.

MR. KATZ: Would you repeat the question.

BY MR. HARDING:

Q Do you recall having seen these documents before, or the earlier reproduction of these documents?

A Vaguely.

Q What do you recall?

A Bally Brain.

MR. KATZ: The witness is referring to 0590.



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BY MR. HARDING:

Q Do you recall having seen the Bally Brain depicted in combination with the various machines of document 592?

A The pinball.

Q Well, okay. I'm sorry.

Do you recall having seen document 592 before?

MR. KATZ: This page, 0592.

BY THE WITNESS:

A Yes.

BY MR. HARDING:

Q And how about document 593; do you recall having seen it before?

A Yes.

Q Document 594?

A No.

Q Do you recall where you saw document 590, '92 and '93?

A No.

Q Do you recall ever having received these documents?

A No.

Q Do you recall whether they were presented

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to anybody at Bally from Milwaukee Coin employees?

A No.

Q Or whether Mr. Nutting and Mr. Frederiksen presented them to anybody at Bally?

A No.

Q You do not recall whether these documents were produced to you during your visit to Milwaukee Coin in the September/October 1974 time frame?

A No.

THE WITNESS: Can I talk to you a minute.

MR. KATZ: Sure.

(There was a discussion between the witness and Mr. Katz outside the deposition room, after which the taking of the deposition was resumed as follows:)

BY MR. HARDING:

Q Let me show you document 606 through 609, and ask whether you have ever seen those documents, or the unannotated versions of those documents?

A No.

Q Document 608 is entitled "Estimated Material and Cost Data, Microprocessor Controlled Pinball Game." Prior to 1975, do you recall ever having

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seen any cost estimates for microprocessor controlled pin games?

MR. KATZ: Could I have that question back.

Q (Read by the reporter.)

BY THE WITNESS:

A No.

BY MR. HARDING:

Q Now, earlier we discussed a visit by certain members of the evaluation team, I believe, to Milwaukee Coin, and the Flicker game was observed there.

Do you recall where physically the demonstration took place? In other words, it was at Milwaukee Coin: was it a laboratory, in the hall, in a conference room, or where?

A On their premises. What type of room, I do not recall.

Q Do you recall whether it was in a laboratory or not?

A It was a room.

Q Do you recall whether there was equipment, electronic test equipment, around the room?

A I do not recall.

Q Do you recall the time of day that you

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viewed the machine?

A No.

Q Do you recall how long a period you viewed the machine?

A No.

Q Do you recall whether you played the game?

A No.

Q Do you recall whether anybody played the game?

A No.

Q Do you recall whether you looked under the playfield of the game?

A No.

Q Do you recall whether anybody did?

A No.

Q Do you have a present recollection now of having seen the Flicker game at the time?

A Yes.

Q What do you recall? Can you describe the game that you saw for me?

A It was our Flicker game, our production model that had been electronicized.

Q And how do you know it had been electronicized?

A I saw some boards there, electronic boards,



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solid -- you know.

Q Were the boards connected to the game?

A Yes.

Q Where physically were the boards on the game?

A I do not recall.

Q Do you recall how many boards there were?

A No.

Q Do you recall whether there was more than one?

A No.

Q Do you recall the type of displays the game had?

A They were readouts, type, I do not remember.

Q Can you tell me what a readout is?

A It is an LED, or a fluorescent type.

Q It was not a drum type?

A No.

Q Do you recall whether every display for the particular Bally Flicker model had this readout, or whether some had the drum-type displays still?

A Rephrase that.

Q Do you recall whether every display was of this readout type, or whether some were of the old



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conventional drum type?

A There were no drums.

Q No drums.

How do you know that there was not an electromechanical controller in the machine in addition to the boards you saw?

A I did not see anything electromechanical in the game, outside of the things on the playfield.

Q Well, did you see solenoids?

A Yes.

Q That is electromechanical?

A Yes.

THE WITNESS: Can I see you out here?

MR. KATZ: Sure.

(There was a discussion between the witness and Mr. Katz outside the deposition room, after which the taking of the deposition was resumed as follows:)

MR. KATZ: The witness' problem was that when he talked about electromechanical, he thought there was some confusion.

The solenoids he was talking about were the solenoids that were associated with the playfield,

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or mounted under the playfield. But, before, he thought maybe it was inconsistent with what he said before; but before he was talking about the electro-mechanical components normally in the coffin box, what they call the coffin box of the pinball machine.

BY MR. HARDING:

Q Is that right, Mr. Britz?

A That is right.

Q So then you do recall having looked underneath the playfield and seeing the solenoids?

A Even today you have to have solenoids for the flippers and the thumper bumpers; it is the only way you can do it. They had to be there.

Q Okay, but you do not recall actually having seen the solenoids of the converted Flicker game; you just knew it had to have them?

A That is right.

Q Now, do you recall Mr. Frederiksen or Mr. Nutting, either one, having actually told you, or anybody on the evaluation team, that this game actually included a microprocessor --

A Yes.

Q -- as a controller?

A Yes.

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Q Who said that?

A Both.

Q They both said that?

A Yes.

Q Did they then point out the microprocessor on the boards?

A I do not recall.

Q Do you recall anybody on the evaluation team studying the boards in detail and taking notes?

A Yes.

Q What do you recall?

A Bracha.

Q What did Mr. Bracha do?

A Pardon me?

Q What did Mr. Bracha do?

A He studied it.

Q How did he study it?

A Visually, as far as I know.

Q Do you recall him visually studying it more than the other people on the evaluation team?

A Yes.

Q Do you recall any explanation given to Mr. Bracha as he was studying the game?

A No.

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Q Now, after the demonstration in September/October 1974 at MCI, do you recall ever having seen the converted Flicker game again?

A No.

Q Do you recall ever having received a report from from anybody that any other Bally employee had ever again seen the converted Flicker game?

A Bracha came out with a report subsequent to that.

Q What did he report?

A I do not recall.

Q You do not recall whether he had reported ever having seen it again?

A No. I do not recall.

Q Now, I am handing you document 1091, and ask that you look at it.

A (Witness reading.)

Q It is a memorandum directed "To All Members of the Evaluation Team," submitted by Mr. Joe Robbins, purportedly 10/22/74, purportedly about a meeting held October 15, '74.

Do you recall having seen this document before?

A No.

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Q Do you recall in October '74 whether there was any review of a flipper program at Bally?

A No.

Q Do you recall on October '74 whether there was any discussion at Bally about the progress in the industry in solid state engineering for flippers?

A I do not recall.

Q Was Mr. Robbins chairman of this evaluation team?

A Yes.

Q Was it his job to, if you know, submit written summaries of meetings of the evaluation team to the various members of the evaluation team?

A Yes.

Q I hand you another document, 1090, which is another memorandum purportedly from Mr. Robbins dated -- I do not see a date -- purportedly about a meeting held November 7, 1974, by the evaluation team.

I ask you if you have ever seen this document before?

A No, I do not recall.

Q Do you recall whether, in November '74, the flipper market was reviewed by the members of the evaluation team?

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A I do not recall.

Q Do you recall whether there was any discussion before 1975 of whether Atari had a solid state flipper game?

A I do not recall.

Q Do you recall whether, at Bally, there was any discussion of whether Atari had a solid state flipper game prior to 1975?

A I do not recall.

Q Do you recall any discussion at Bally concerning whether Atari was even considering entering the flipper pinball market?

A I do not recall.

Q Now, Paragraph 6 of this document refers to two projects beind underway and under examination.

Were there two electronic flipper projects underway at Bally on or around November 1974?

A Two?

Q Yes.

A I do not recall.

Q Well, do you recall any --

A One.

Q -- projects being underway?

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A One.

Q Was that Mr. Bracha's project?

A Right.

Can I have the date again, please?

Q On or around November '74, I said.

A Okay.

Q You do not recall?

A Prior to '75.

Q Prior to '75.

A Right. Okay.

Yes, yes.

Q Yes, you do not recall?

A Yes, I do recall.

Q Yes, you do recall.

MR. HARDING: Now, would you read the question back again.

(The record was read by the re-
porter as requested.)

BY MR. HARDING:

Q You do recall, then, Mr. Bracha's project being underway before 1975?

A Right.

Q Now, the third sentence in Paragraph 6:

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"Atari's entrance into the field may bring on serious marketing problems with our present distributors."

Do you recall before 1975 anyone at Bally being concerned that Atari may enter the pinball field?

A No, I do not recall.

Q Or whether, if Atari entered the pinball field, serious marketing problems may develop?

A I do not recall.

Q Do you recall before 1975 whether there was any apparent wisdom in pure research and development for the solid state flipper program?

MR. KATZ: Object to the question as being indefinite.

Could I have that question read back.

MR. HARDING: All right -- well, strike the question.

BY MR. HARDING:

Q In the 6th paragraph it states:

"The wisdom of research and development of a pure form in this field is now apparent."

Do you have any recollection of there being any recognition in Bally in 1974 of the wisdom

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of research and development of a pure form in the field of solid state flippers becoming apparent?

A Prior to '75?

Q Prior to 1975.

A Yes.

Q What do you recall?

A After seeing the Nutting/Frederiksen electronicized flipper, we decided we would go ahead on our own and electronicize -- work up an electronicized flipper.

Q Well, do you have an understanding of what a pure research and development effort is?

A Yes.

Q What is a pure effort?


A My definition of a pure effort is electronicizing as much as you possibly can and eliminating all of the electromechanical components that you can.

Q And when it would be applied to pure research and development, is that a different meaning?

A I do not understand the meaning.

Q Okay.

MR. KATZ: I object to the question and note my objection here for the record to any attempt by the defendants to use this testimony to interpret a



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document which this witness has indicated he did not recall seeing before and there is no indication that he was the author of the language which was quoted by Mr. Harding from the document.

MR. HARDING: Mr. Katz, the record will reflect 100 percent that I was asking this witness for his meaning and his definitions, so I think that last statement was purely unnecessary.

BY MR. HARDING:

Q Mr. Britz, I am now handing you --

A Could I hear that all back, please?

(The record was read by the reporter as requested.)

BY MR. HARDING:

Q I hand you a document, No. 771 through 775, which is a departmental correspondence from Mr. Bracha to Mr. Lally, cc, Mr. O'Donnell, Mr. Britz, and Mr. Conroy.

I ask if you recall ever having seen this document before?

A I do not recall.

Q Does the subject matter look familiar to you?

A Yes.

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Q On the second page of this document, Sub-paragraph B, "Electronic Bingo," there is a statement:

"The goals for this project are to design a bingo game using the same microprocessor technology employed in the electronic flipper effort. The plan is to study the bingos, define a universal design, design an electronic version, fabricate two units, and evaluate them."

Do you recall, prior to 1975, any objective at Bally to design a universal design for a microprocessor controller?

A No, I do not recall.

Q Now, under Subparagraph A on that same page here is reference to a Boomerang model, under the heading "Electronic Flipper."

Does that refresh your recollection of whether there was any conversion of a Bally Boomerang game into a solid state flipper game?

A I do not recall.

Q I hand you document 636, which is a memo from Mr. Robbins dated 12/24/74, to the members of the evaluation team, purportedly about a meeting held December 17 by the evaluation team.

Do you recall ever having seen this



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document before?

A No.

Q The third line of that document states:
"In attendance, J. Britz," and others.

Do you recall whether in December '74
you attended a meeting of the evaluation team?

A December the 17th, 1974?

Q No. In December of 1974.

A I do not recall.

Q Well, do you recall a meeting of the evaluation team in 1974 wherein the solid state flipper game in Milwaukee was discussed?

A Yes.

Q Do you recall whether that was towards the end of 1974?

A I do not recall.

Q What do you recall the discussion to be at that meeting?

A Whether or not we should accept the Nutting flipper or whether we should make our own, electronicize our own.

Q Was there any decision made in this regard before 1975?

A Yes.

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Q What was the decision?

A To go on our own.

Q Now, in Paragraph 1 of this document, 636, it states that it "was decided to make an offer for insurance purposed" -- which I assume means purposes. It says, "John Britz will present the proposal to Nutting and Frederiksen after final approval."

Do you recall any such decision?

A No.

Q Do you recall ever presenting a proposal to Nutting and Frederiksen concerning an offer for their design?

A No.

Q I hand you document 779 through 790, and ask you if you would review those documents.

It is a departmental correspondence dated January 29, '75, from Mr. Bracha to Mr. Lally, carbon copy to a number of people, including J. Britz.

Do you recall having seen this document before?

A I do not recall.

Q Is the subject matter of the document familiar to you?



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A Yes.

Q On the first page of this document under the heading "Semielectronic Slot," it says: "The project is completed."

Do you recall whether such a project included use of a microprocessor to control a slot machine?

A I do not recall.

Q On Page 3 of the document under the heading "Electronic Flipper, EO Number 606," there is a reference to a "punching of a white board for the electronic game."

Do you have an understanding of the use of a white board when developing electronic pin-ball games?

THE WITNESS: Can I see you?

MR. KATZ: Sure.

(There was a discussion between the witness and Mr. Katz, after which the taking of the deposition was resumed as follows:)

MR. KATZ: We have a problem with understanding the question.

The witness is apparently familiar



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with a term "white board" in connection with pinball, but it has no particular association with electronic games, and that is where he has trouble.

MR. HARDING: I think the question was pinball, however.

MR. KATZ: No, it was limited to electronic games, and that is what threw him.

MR. HARDING: Read the question back, please.

Q (Read by the reporter.)

MR. KATZ: That is what -- electronic pin games as distinguished from pin games.

BY MR. HARDING:

Q You do have an understanding of white boards for electronic pin games?

A All pin games.

Q Oh, okay. Well, what is your understanding of the term "white board" for pin games?

A It is the board that you make your layout, your playfield layout on. It is a piece of wood, it is a panel, the top panel of the game.

You lay it out, and it is called a white board, prior to putting artwork on it.

It is white, it is white.

Q Was that a practice at Bally?

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A It is a practice -- yes.

Q To your knowledge is it an industry-wide practice?

A Yes. Whether they call it white board or not, I do not know, but we call it white board.

Q Is it a simulation of a final pinball game?

A It is a simulation without the artwork; it is white.

Q Does it actually contain a moving pinball?

A It has everything on it.

Q So if a ball hits a rollover switch, a score may be incremented, then?

A Correct.

Q Now, handing you document 634 and 635, which is yet another memorandum from Mr. Robbins concerning a meeting of the evaluation team, purportedly on February 13, '75, and your name is listed as in attendance at that meeting.

Do you recall having seen a copy of this document in the past?

A No.

Q Do you recall a meeting of the evaluation team on or about February 1975?

A No.



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Q Do you recall any discussions in early 1975 about the possibility of licensing games from Atari?

A No.

Q Now, under the heading "Electronic Flipper," on Page 1 of this document, it states: "They" -- and I presume that to refer to a composite board in the previous sentence -- "will then meet after examining one project and reach a decision as to our proper direction - some options are: adopt our prototype and method, recommend the Milwaukee unit approach, or, 3, recommend a new approach and new development project."

Now, do you recall a composite board being in existence in early 1975 at Bally?

A No.


Q Have you ever heard the term "composite board" used to refer to any group --

A No.

Q -- of individuals in connection with the electronic flipper project?

A No.

Q Do you recall any discussions involving yourself as to whether the Bally prototype and method, as opposed to the Milwaukee approach, as opposed to



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a new approach and new development project, would be discussed?

A Can I have that over again, please.

Q (Read by the reporter.)

BY MR. HARDING:

Q It should be "would be adopted."

I will re-ask the question if it is unclear.

A It is unclear.

Q Okay. Do you recall in early 1975 whether there was any discussion involving yourself as to whether the Bally prototype and method would be adopted by Bally, or whether the Milwaukee unit approach would be adopted, or whether a whole new approach and a whole new development project would commence?

THE WITNESS: Can I see you?

MR. KATZ: Yes.

(There was a discussion between the witness and Mr. Katz outside the deposition room, after which the taking of the deposition was resumed as follows:)



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BY MR. HARDING:

Q Is there something the witness would like to clarify on the record?

A Yes. Let me hear that all over again.

Q The last question?

A The last question, yes.

Q (Read by the reporter.)

BY THE WITNESS:

A I do not, no.

BY MR. HARDING:

Q You earlier testified that a decision was made, I believe, in 1974 to go the Bally way; is that correct?

A That is right.

Q And in view of this document dated February '75, is it still your testimony that this decision was in 1974 and not sometime in 1975?

A I thought it was prior to 1975.

Q And this document does not change your recollection?

A No, it does not.

Q Now, at the very bottom of the page there is a reference to "this board." It has got "J. Britz, Chairman," and a number of individuals listed.

Britz - Direct

Do you recall being chairman of any board in 1975 in connection with electronic flippers?

A Vaguely.

Q What do you recall?

A We had a meeting, and again in my own mind I have been thinking that it is prior to 1975, but these people attended.

Q And who are "these people"? Who are you referring to?

A The ones on the bottom of the sheet, here: Bracha, Englehardt, Telnaes, Frederiksen -- I do not recall Frederiksen being there -- Blahuta, Conroy. I do not recall Clark being there.

Q How about Mr. Frye?

A I cannot say for certain.

Q Mr. Nutting?

A I do not recall him being there.

Q Well, you recall a meeting, you said?

A Yes.

Q Now, my question was directed to a board that you chaired.

A I chaired the board for that meeting, for a meeting.

Q Well, were these individuals on the board?

Britz - Direct

A They were in attendance.

Q Okay, so you are not making any distinction between the board and the people in attendance at the meeting.

A That is right.

Q Was it this meeting that made the determination of which way to go?

A That is right.

Q Well, but your recollection still is that you thought it is 1974 and not 1975?

A I thought it was the later part of 1974.

(Whereupon the taking of the deposition was recessed at 12:40 p.m. to 1:30 p.m.)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BALLY MANUFACTURING CORPORATION,)
a Delaware corporation,)
)
Plaintiff-Counterdefendant,)
)
vs.) No. 78 C 2246
)
D. GOTTLIEB & CO., a corporation,)
and WILLIAMS ELECTRONICS, INC., a)
corporation,)
)
Defendants-Counterplaintiffs)

BALLY MANUFACTURING CORPORATION,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.) No. 79 C 713
)
GAME PLAN, INCORPORATED, a)
Delaware corporation, and)
ASTRO GAMES, INC., an Illinois)
corporation,)
)
Defendants.)

Thursday, May 22, 1980

1:30 o'clock p.m.

Parties met pursuant to recess.

PRESENT:

MR. KATZ

MR. HARDING

MR. GOLDENBERG

- - - - -

(The taking of the deposition of
JOHN A. BRITZ was resumed as
follows:)

Britz - Direct

JOHN A. BRITZ

called as a witness by the defendant herein, having been previously duly sworn, was examined further upon oral interrogatories and he did thereupon further depose and testify as follows:

DIRECT EXAMINATION (Resumed)

BY MR. HARDING:

Q Would you please review document 637, which I am handing to you.

A (Witness reading.)

Q Document 921 and 922.

A (Witness reading.)

Q I will ask you: do you know what document 921, 922 is?

A I know what 921 and 922 relate to, yes.

Q What do they relate to?

A A flipper design, electronic pin.

Q Do you know the name of the game?

A It says it up there, Boomerang.

Q So is your memory refreshed now of whether there was a Boomerang game converted to solid state?

A I do not remember the name of the game.

Q The document contains it, and that is the only reason that you said "Boomerang"?

Britz - Direct

A Because it is on the top here, that is right.

Q Now, it says: "Status of 5/2, or 5/3/75," at the very top of the first page, and over in the right-hand column it says "Complete game operative and playable."

Do you see that?

A Yes.

Q Have you ever seen this set of documents before?

A I do not recall.

Q Do you know when the first solid state pin-ball game was complete and operative at Bally?

A I do not recall.

Q I will ask you to review document 1124 through 1126.

A (Witness reading.)

Yes?

Q All right. Now, having reviewed these three documents, is your memory refreshed in any way as to when the decision was made to go the Bally way as opposed to the Milwaukee way?

A Not as to the exact time.

Q Well, as far as the year goes?

A No.



Britz - Direct

Q Referring to document 1124, that purports to be a departmental correspondence dated May 9, 1975, from John Britz to Joe Robbins.

Do you recall ever having seen this document before?

A I do not recall it.

Q Do you recall writing a departmental correspondence after you had a meeting of the evaluation team when you determined to go the Bally way as opposed to the Milwaukee way?

A I do not recall.

Q Do you recall why the decision was made to go the Bally way and not the Nutting way?

A Yes.

Q Please tell me.

A We felt that we had our own in-house expertise, and we did not want the expense of the royalty.

Q Were there any reasons as to one approach being technically superior than the other approach?

A I do not recall.

Q Do you recall what the Nutting way was as opposed to the Bally way?

A No.

Q Do you recall what the Bally way was?

Britz - Direct

A No.

Q Do you recall the type of microprocessor used by Mr. Nutting?

A No.

Q Do you recall the type of microprocessor used by Mr. Bracha?

A M6800 Series.

Q Do you recall whether that was an 8-bit microprocessor or a 4-bit microprocessor?

A I do not know.

Q Do you recall whether Milwaukee had an 8-bit or a 4-bit approach?

A I do not know.

Q At the bottom of document 1124 there is a note which reads:

"The 4-bit versus 8-bit controversy came up again and it was decided that the Reno and Bally group would meet and thrash it out. In all probability this will take place in Reno."

Do you recall a 4-bit versus 8-bit controversy in 1975 between the Reno and Bally groups?

THE WITNESS: May I see you?

Britz - Direct

(There was a discussion between the witness and Mr. Katz outside the deposition room, after which the taking of the deposition was resumed as follows:)

MR. KATZ: What was the question?

Q (Read by the reporter.)

BY THE WITNESS:

A There is a vague recollection; whether it was between Reno and the Bally group, I do not recall. But there was some discussion with regard to it.

BY MR. HARDING:

Q Do you recall what the discussion was?

A No, I do not.

Q Do you recall whether it was Reno or Bally who proposed the 4-bit approach?

A I do not recall.

Q Do you recall whether there was ever a meeting where it was thrashed out?

A I do not recall.

Q Are you familiar with whether Reno ever adopted a 4-bit approach or an 8-bit approach?

A I do not know.

Q Have your responsibilities ever included the

Britz - Direct

Reno activities?

A Yes.

Q Prior to 1976 did they include the Reno activities?

A Yes.

Q Prior to '76 were you familiar with the Reno activities?

A Yes.

Q What was the primary activity at Reno?

A They were commissioned to work on a monitoring system to monitor pin games for security purposes, and also accounting purposes.


Q And did they also obtain a commission to develop a microprocessor controlled slot machine?

A Yes.

Q Was that after the Belmont group had discontinued a program to develop a microprocessor slot machine?

A I do not recall.

MR. KATZ: Excuse me. Can I have the witness listen to his answer. Just for the clarity of the record, I think you might have misspoken. Listen to your answer.



Britz - Direct

(Whereupon the record was read
by the reporter as requested.)

THE WITNESS: No, no. Slot machines. Not pin
games, slot machines. Thank you.

BY MR. HARDING:

Q Do you know where Mr. Telnaes is, where he
is presently employed?

A No, I do not.

Q Is he presently with Bally?

A No.

Q Midway?

A No.

Q Any of the Bally Manufacturing Company sub-
sidiaries?

A No, no, he is not.

Q Do you know when he left the employ of Bally
or Midway?

A '79.

Q At the end of '79, middle?

A I do not know when.

Q Do you know why he left?

A Yes.

Q Why?

A His contract ran out and we had no further



Britz - Firect

use for his services.

Q You said his contract?

A His contract, that is right.

Q Do you know the location of the country that he is presently employed in?

A No.

Q Who took Mr. Telnaes' position over Reno?

A Ted Sarbin, S-a-r-b-i-n.

Q Was he a Bally employee before assuming that responsibility?

A No.

Q Do you know who Mr. Telnaes reported to in the 1975 time frame?

A To myself and Mr. O'Donnell.

Q Do you know, prior to 1976, whether the Reno group developed any operational microprocessor controlled device?

MR. KATZ: I object to the question as being indefinite as to what is meant by the term "operational."

BY MR. HARDING:

Q When it operated to perform the function it was intended to perform, whatever that may be.

A I do not recall.

Q Do you know, did the Reno group work on any

Britz - Direct

activities other than slot machines, or control groups for slot machines, you know, slot machine related work?

MR. KATZ: And you are talking about --

MR. HARDING: Prior to '76.

BY THE WITNESS:

A I do not recall.

BY MR. HARDING:

Q I hand you document 791 through 795, which is a June 3rd, 1975 departmental correspondence from Mr. Bracha to Mr. Lally, "Subject: R & D Status Report," and direct your attention especially to the second page under the heading "Electronic Flipper."

A (Witness reading.)

Yes?

Q Do you recall around May of 1975 of having seen an operational microcomputer controlled pinball game --


A I cannot recall.

Q -- developed by Bally?

A I cannot recall.

Q Do you recall any time in 1975 having seen a microprocessor controlled pinball game developed by Bally?

A I cannot recall the time frame.



Britz - Direct

Q Do you recall a demonstration to key Bally management people including Mr. O'Donnell, yourself, Mr. Clark, Mr. Conroy, Mr. Lusaro, Mr. Shearer, Mr. Telnaes, Mr. Blahuta, of a microprocessor controlled pinball game in the approximately 1975 time frame?

A I cannot recall.

Q I hand you document 2330 through 2344 and ask you if you are familiar with that document?

Certain portions, you will note, have been expunged, and please review it with that in mind.

A (Witness reading.)

I do not recall this.

Q Are you familiar with the subject matter of the document?

MR. KATZ: Which one? Any specific document, or all of these?

MR. HARDING: I think they are all related. You have a main document and then attachments.

BY THE WITNESS:

A Yes, I am familiar with it.

BY MR. HARDING:

Q What does the subject matter relate to?

A Electronic pin games and the microprocessor.

Britz - Direct

Q Is that the 4-bit versus the 8-bit controversy between Reno and Bally?

A I do not know.

I do not know.

Q Do you recall in the years 1974 through '75 whether there were cost comparisons made at Bally between the electronic flipper and the electromechanical flipper?

A I do not recall.

Q I hand you document 2316 through 2325 and ask if you recall having seen that document or the unannotated version of that document?

A (Witness reading.)

I do not recall.

Q Does this document refresh your recollection as to whether there were any cost comparisons done at Bally between electromechanical and electronic flippers?

A Rephrase that -- let me have that again.

Q (Read by the reporter.)

BY THE WITNESS:

A Well, I am sure there were, but I do not know what they are. I cannot remember.

BY MR. HARDING:

Q If you do not remember it, then your memory

Britz - Direct

is not refreshed?

A No.

Q Do you remember, after 1975, any comparisons done by or for Bally comparing solid state pinball machines to electromechanical pinball machines and the relative acceptance of each by the flipper market?

A No, I do not.

Q I hand you document 2329 and ask if you recall seeing that document before?

A I do not recall.

Q Let me hand you document 2212 for you to refer to, also.

A (Witness reading.)

Q Do you recall any studies done by or for Bally after 1975 in an attempt to determine acceptability of solid state pinball versus electromechanical pinball in the flipper industry?

A I do not recall.

Q You indicated that at some point of time the flipper pinball game line of Bally became entirely microprocessor controlled, and you did not recall the year; is that correct?

A That is right.

Q Do you know why electromechanical pinball

Britz - Direct

was discontinued at Bally?

A Sales dictated it.

Q And how do you know that?

A From the sales we got.

Q Does that mean people quit buying the electro-mechanical type, or there was a preference shown for solid state type?

A That is right.

Q You mean the latter?

A That is right.

Q There was a preference shown for solid state?

A That is right.

Q Not that the people quit buying electro-mechanical.

A No. That is right.

Q At Bally in 1976 was solid state more profitable than electromechanical for Bally?

A I do not recall.

Q In 1977 do you recall whether solid state was more profitable for Bally than electromechanical?

A I do not recall.

Q Do you recall the size of the domestic flipper pinball market from the mid 1970s to present?

MR. KATZ: Object to the question for lack of

Britz - Direct

foundation, but if he can answer it --

MR. HARDING: We have already identified the domestic flipper pinball market.

MR. KATZ: Yes, but there is no -- there is nothing to show that there is a foundation for his knowledge as to what the entire market is, that is, other than Bally machines.

But I am not instructing him not to answer.

BY MR. HARDING:

Q In your job responsibility at Bally, have you had occasion to become familiar with the size of the domestic flipper pinball market from the mid 1970s to present?

A No.

Q Is the Bally Alley still being manufactured by Bally?

A No.

Q Do you know when it was discontinued?

A No.

Q Do you know why it was discontinued, if there was a reason?

A Yes.

Q Why was it discontinued?

Britz - Direct

A There was a lot of trouble in the field with it.

Q Do you know what the source of the trouble was?

A I do not know.

Q Do you know, did Mr. Bracha assume responsibility for the Bally Alley project prior to his commencing on the Bally solid state flipper project?

A I do not recall.

Q Do you know whether at some point of time Mr. Nutting became an employee of Bally?

A He did become an employee, yes.

Q Do you know approximately when?

A No.

Q Do you know the circumstances surrounding his becoming an employee, i.e., how he was hired?


A To some extent.

Q Can you tell me?

A Nutting and Associates and whatever the name at that time was, was bought out by Bally, and they went to work for us, Mr. Nutting and Mr. Frederiksen.

Q Do you know why they were bought out?

A For their expertise.

 Q Do you recall knowing at the time whether

Britz - Direct

or not Mr. Nutting and/or Mr. Frederiksen had a pending patent application on solid state pinball at the time that you bought the company out?

A I do not recall.

Q Do you recall whether that was a factor in determining to buy them out?

A I do not recall.

Q Was there any person at Bally who was the primary person responsible for pursuing the acquisition of the Nutting company?

A Yes.

Q Who was that?

A Mr. Henry Ross.

Q Did Mr. Ross ever indicate why he wanted Bally to acquire the Nutting company?

A I do not recall.

Q Was Mr. Robbins also instrumental in that determination?

A I do not recall.

Q Who is Mr. Robbins?

A He is the president of our distributing division called Empire.

Q And he was the chairman of the evaluation team?

Britz - Direct

A At one time.

Q Who became chairman after he no longer was chairman?

A No one.

Q Was the evaluation team eventually abandoned at Bally?

A Yes.

Q Do you know when?

A No.

Q Do you know whether it was before the Bally line became entirely solid state in flippers?

A I do not recall.

MR. HARDING: Let's take about a five-minute break and I think we will be finished.

(There was a brief recess, after which the taking of the deposition was resumed as follows:)

BY MR. HARDING:

Q Mr. Britz, have you ever seen the patent in suit in this litigation?

A Let me have that again?

Q Have you ever seen the patent in suit in this litigation, which is the Nutting patent, Nutting et al patent?

Britz - Direct

A I do not recall.

Q You do know that the lawsuit that you are being deposed in connection with today has to do with the Nutting patent?

A Yes.

Q And that has to do with microprocessor controlled pinball games?

A Yes.

Q Have you ever formulated an understanding of what the Nutting invention is?

A No.

Q Have you ever formulated an opinion of whether D. Gottlieb and Company infringes that patent?


A No.

Q Were you a participant in the decision to sue Defendant D. Gottlieb and Company underneath that patent?

A No.

Q Do you have an understanding of whether the present Bally system employs the invention of Messrs. Nutting and Frederiksen?

A Let me have that again, please. Would you repeat that.

 Q (Read by the reporter.)

Britz - Direct

BY THE WITNESS:

A I do not know.

BY MR. HARDING:

Q You have no understanding?

A No.

MR. HARDING: That is all the questions I have.

AND FURTHER DEPONENT SAITH NOT